



NON-WAIVER GUIDE

Many times, we receive a claim with a note on the Loss Notice requesting a Non-Waiver be obtained. There appears to be some confusion amongst the adjusters, examiners and public in general as to what this form is for and why we are asked to obtain one from the policyholder. Hopefully, this brief overview will clear up some of the confusion.

WHAT IS A NON-WAIVER?

In the context of Insurance law, a non-waiver clause is a provision in the contract which states the policyholder acknowledges the insurer's investigation or defense of a claim against the insured does not waive the insurer's right to contest coverage later. Generally speaking, the purpose of the non-waiver clause in a contract is to protect a party who excuses the other party's non-compliance with contract terms, and to prevent the parties' course of conduct under the contract from resulting in the loss of enforceability of the actual terms of the contract.

For example, a contract (insurance policy) requires the policyholder to give prompt written notice to the insurance company of a loss but the policyholder does not turn in a claim until 35+ days after the loss. The adjuster is sent to inspect the loss and conduct an investigation. In the absence of a non-waiver, it could be construed that because the claim was investigated and inspected, the insurance company has waived this policy language and would not be able to deny the claim and state that the lack of prompt notice constitutes a breach of the contract. However, with a non-waiver clause, the insurance company would be able to enforce the "prompt notice" language in the contract, regardless of the course of conduct that was inconsistent with the contract language.

COMPLETING A NON-WAIVER?

1. It must be signed by both the policyholder and the adjuster, dated, and **the reason must be clear and precise.**
2. Neither the policyholder nor the adjuster put anything in the "Reason" area other than why the non-waiver is being presented.
3. We are asking them to sign a form because there is a question of coverage.

Once the form has been presented to the policyholder, signed and dated, it must be attached to the Preliminary Report. The investigation should continue and the issue will need to be resolved with the explanation included in the Narrative Report. Depending on the issue, the resolution could be a brief paragraph, a denial in the denial section or an Underwriting alert.

Below is a list of the most common reasons a non-waiver would need to be obtained:

1. The claim was not reported promptly. It was reported more than _ days after the stated date of loss.
2. Further investigation is necessary to determine the appropriate property location insured under this policy.
3. Further investigation is necessary in regards to the named insured on the policy.
4. Further investigation is necessary to determine the presence of a general and temporary condition of flooding.
5. Further investigation is necessary to determine if the policy was in force at the time of this loss.
6. Further investigation is necessary to determine if the insured building is rated appropriately. (*I.E., Post-FIRM elevated limitations or basement limitations*)
7. Further investigation is necessary in regards to coverage for the _____. (*I.E., retaining wall, walkway, patio, deck, dock, lawn, shrubs, shed or driveway*)
8. Further investigation is necessary to determine whether or not the detached garage is used for residential, farming or business purposes.
9. Further investigation is necessary to determine the property insured under this policy as there are multiple buildings at the loss location.
10. Other – Be Specific

NON-WAIVER

Policy Number: _____ Date of Loss: _____

Insured Name(s): _____
Please print

Loss Location: _____
Address

City *State* *Zip Code*

IT IS AGREED, that any action taken heretofore or hereafter by the insurance company, or companies, signing this agreement in ascertaining the amount of the actual cash value; and the amount of the loss and damage which occurred to, located at, and in investigating the cause thereof, shall not waive or invalidate any of the conditions of the policies of insurance.

NOTICE, is hereby given and accepted, and it is hereby mutually understood and agreed, that no representative of any insurance company signing this agreement has power or authority to waive any of the conditions of their respective policies, unless such waiver is specifically made in writing.

THE REASON(S) for executing this request is (in addition to any such other reasons as may appear):

THE SOLE OBJECT AND INTENT of this agreement is to provide for the determination of the amount of the actual cash value and the amount of the loss and damage, and an investigation of the cause thereof, without regard to the liability, if any, of said insurance companies.

Insured Signature(s)

Insurance Company Name(s)

Witness Signature(s)

Date Signed

